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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-844

P.L. SNYDER,

Petitioner,

vs.

R.I.D.C. INDUSTRIAL DEVELOPMENT FUND,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF OF PETITIONER

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AUTHORITIES

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ARGUMENT

The Fifth Circuit's Decision is in Conflict with the Decisions of Other Federal Courts.

Respondent, at page 5 of its brief in opposition to the petition for a writ of certiorari, incorrectly states that the decision of the Fifth Circuit "[i]s in conflict

with no other decision of any federal court". In fact, the Fifth Circuit's decision is in conflict with decisions of this Court and of the Second, Fourth, Seventh and Tenth Circuits.

The Fifth Circuit's decision ignores the distinction between discharge of the **debtor** and cancellation, discharge and extinguishment of the **debt**. The effect given language in the plan of arrangement providing for the cancellation, discharge and extinguishment of the debt is the single pivotal issue in a proper determination of petitioner's liability under his guaranty.

The practical effect of the decision of the Fifth Circuit is a determination that discharge of the bankrupt is the same as cancellation, discharge, and extinguishment of the debt. Decisions of this Court and of the Second, Fourth, Seventh and Tenth Circuits demonstrate that the phrases mean entirely different things.

In Zavelo v. Reeves, 227 U.S. 625, 629 (1913), this Court implicitly recognized as follows the distinction between discharge of the debtor and extinguishment of the debt:

> [A] discharge, while releasing the bankrupt from legal liability to pay a debt that was provable in the bankruptcy, leaves him under a moral obligation that is sufficient to support a new promise to pay the debt. . . . The theory is that the discharge destroys the remedy, but not the indebtedness; . . .

The distinction was enunciated more clearly in later cases decided by the Circuit Courts:

> A discharge in bankruptcy does not extinguish a debt but only raises a bar, and the discharge must be pleaded. Beneficial Finance Co. v. Sidwell, 382 F.2d 275, 276 (10th Cir. 1967).

> A discharge is neither a payment nor an extinguishment of a debt. When properly pleaded, it is a bar to the enforcement of an existing debt by legal proceedings and, thus, it amounts merely to a personal defense which is waived if the debtor chooses not to avail himself of it. In re Innis, 140 F.2d 479, 481 (7th Cir. 1944), cert. denied 322 U.S. 736 (1944).

> It must be remembered that a discharge in bankruptcy is neither a payment nor an extinguishment of debts. It is simply a bar to their enforcement by legal proceedings. Helms v. Holmes, 129 F.2d 263, 266 (4th Cir. 1942).

> [T]he discharge provided by Section 17 [of the Bankruptcy Act] does not extinguish debts; it only bars, if pleaded, legal proceedings to enforce payment of the discharged debts. Zwick v. Freemen, 373 F.2d 110, 116 (2d Cir. 1967), cert. denied 389 U.S. 835 (1967).

CONCLUSION

Petitioner does not question the right of a secured creditor to participate in a Chapter XI arrangement. Rather, petitioner urges that once the secured creditor chooses to participate in the arrangement, it should be bound by the plain and unequivocal language of an arrangement in which it joins and to which it consents. A just determination of this cause requires that the construction placed upon the language of the plan of arrangement calling for the cancellation, discharge and extinguishment of the underlying debt be consistent with the decisions of this Court and of the Second, Fourth, Seventh and Tenth Circuits cited in this reply brief.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that three copies of the foregoing were furnished to each of the following, who are all of the parties required to be served, in compliance with Rule 33.1 of this Court, by air mail, the 26th day of January, 1977:

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